CONTRACTORS – SINGLE SALES FACTOR APPORTIONMENT SPECIAL REGULATION 2A

The following special regulation applies to contractors who elect to report income using the completed contract method; provided, however, that, with respect to contracts with a gross revenue of \$100,000 or less, such regulations shall apply only at the option of the taxpayer.

- 1) Single Sales Factor Apportionment. For tax years beginning on or after January 1, 2009, a taxpayer must allocate its nonbusiness income pursuant to §39-22-303.5(5) C.R.S. and apportion its business income using the sales factor set forth in this regulation. A taxpayer cannot use this single sales factor apportionment methodology for tax years beginning before January 1, 2009.
 - a) In General. A contractor who has income from sources both within and without Colorado and elects to report income using the completed contract method shall determine income in accordance with this regulation. Net income shall first be categorized as to "business" or "non-business" and non-business income will be directly allocated to specific states in accordance with §39-22-303.5(5) C.R.S. and the regulations thereunder. Gross profits from completed contracts, business administrative income and business administrative expense will be apportioned to those states in which business is conducted based on the sales factor as set forth in this regulation. The amount of net income subject to tax by Colorado will be the sum of (1) the gross profit from completed contracts apportioned to Colorado less business administrative expense apportioned to Colorado plus (2) other business income apportioned to Colorado that is not directly attributable to completed contracts plus (3) the amount of non-business income allocated to Colorado.

b) **General Definitions**.

- i) "Job" means a long-term contract entered into to build, construct, install or manufacture which will not be completed within the tax year in which it is entered into. As used in this regulation a "job" will refer to only those contracts where a taxpayer elects to report income using the completed contract method.
- ii) "Job Revenue" means gross revenue recorded on the books in accordance with generally accepted accounting principles. Billings shall be adjusted for overbillings or underbillings whenever applicable.
- iii) "Job Costs" means costs recorded on the books as being paid or accrued that are directly attributable to a specific job.
- iv) "Job Profit or Loss" means the gross profit or loss attributable to a specific job, which is determined by subtracting "Job Costs" from "Job Revenue".
- v) "Gross Profit Apportioned to Colorado" means Colorado's share of the sum of "Job Profits and Losses" of all jobs completed during a specific tax period.
- vi) "Administrative Expense Apportioned to Colorado" means Colorado's share of expense not directly attributable to a specific job.

- vii) "Revenue", unless otherwise required by context means gross sales or gross receipts.
- c) **Business and Non-business Income.** For definitions and rules for determining business and non-business income, see Regulation 39-22-303.5.1(A).
- d) Apportionment Factor. The taxpayer shall apportion business income using the sales factor.
 - i) The Sales Factor. The sales factor is a fraction, the numerator of which is the sales of the taxpayer in this state during the taxable year and the denominator of which is the sales of the taxpayer within and without this state during the taxable year. All revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer is included in the denominator of the sales factor. The numerator of the sales factor is the total revenue of the taxpayer in this state during the tax year. When determining the denominator and numerator of the sales factor, revenue directly attributable to contract jobs shall be included in the tax year on the basis of progress billings and receipts from completed and incomplete contracts. When determining the numerator, the typical computation is:

Total contract price for all jobs completed in this state during the tax year.

Plus

Total progress payments billed or received

for all incomplete jobs in this state at the end of the tax year

Less

Total progress payments billed or received in prior tax years for the above completed and incomplete jobs in this state

Equals

Total revenue directly attributable to all jobs in this state during the tax year.

<u>Add</u>

Revenue from other business activities in this state not directly attributable to jobs.

Equals

Numerator of Sales Factor

The denominator of the sales factor would be computed in the same manner for all jobs everywhere and includes all other revenue from business activities not directly attributable to contract jobs.

- e) **Apportionment of Income and Expense.** Once the sales factor has been determined, income and expense shall be apportioned to this state as set forth in this regulation.
 - i) Gross Profit. The gross profit of each and all jobs completed during the tax year shall be apportioned to Colorado by the sales factor.
 - ii) Administrative Expense. Administrative expense not directly attributable to jobs and not directly related to allocated income shall be apportioned to Colorado by the sales factor.
 - iii) Other Business Income. Other business income not directly attributable to jobs shall be apportioned to Colorado by the sales factor.
- f) Colorado Taxable Income.

Gross profit apportioned to Colorado from all jobs completed during the tax year

<u>Less</u>

Administrative expense apportioned to Colorado

Plus

Other business income apportioned to Colorado not directly related to jobs

Equal

Total taxable income apportioned to Colorado

Add

Non-business income allocated to Colorado

Equals

Colorado Taxable Income

g) Alternative Methodologies. If the apportionment and allocation provisions of this methodology do not fairly represent the extent of the taxpayer's activities in Colorado, the taxpayer may petition for, or the director may require, with respect to all or any part of the taxpayer's business activities, if reasonable, alternative methodologies as set forth in §39-22-303.5(7)(B), C.R.S.